

On October 21, 2005 appellant, then a 53-year-old letter carrier, filed a claim for an emotional condition, alleging that he developed depression and anxiety due to stress at work. He

alleged that the management gave him conflicting or vague work instructions or no instructions,¹ told him that he was not allowed to ask questions or make comments about his job,² monitored his delivery route,³ criticized his job performance and threatened him with disciplinary action.⁴ Management denied appellant's request for leave to attend his son's wedding,⁵ told him to get back to work when he asked a coworker about an instruction he had received⁶ and made inappropriate comments concerning his use of the restroom.⁷ At a meeting, supervisor Brian Crawford "grudgingly" allowed appellant to ask questions. Appellant alleged that the Office prematurely closed an earlier compensation claim.⁸ He alleged that management did not make accommodations in his production standards regarding his accepted medical condition.⁹ Appellant was told by another carrier that a former supervisor had visited the employing establishment. This information upset him because this supervisor had caused the majority of his problems from 1993 to 1997.¹⁰

¹ Appellant stated that on one occasion he and other carriers manually stamped "return to sender" mail rather than risk being disciplined for mistakes caused by the postal automated redirection system (PARS) machine. However, they were told they could be disciplined for manually stamping the mail.

² On one occasion Janet Vincent, a supervisor, told appellant and two other employees that they were not allowed to ask questions during a discussion. She told them they were "pathetic" carriers, the worst she had seen and she would not tolerate being criticized by her manager because of them.

³ On one occasion Ms. Vincent approached appellant on his route when he parked in front of a school to use the restroom. In front of a postal patron, she told him that he had been inside the school for more than 12 minutes and asked him how many times a day he used a restroom. Appellant was embarrassed and felt that Ms. Vincent was trying to make him angry so that she would have an excuse to cite him for insubordination. On another occasion she asked appellant why he was late returning from his route.

⁴ Appellant was threatened with discipline if he made too many errors in using the PARS automated system. He alleged that he received inadequate training in recognizing PARS and nonPARS mail. However, he noted that his errors using PARS were less than one percent. Appellant alleged that he was threatened with discipline for the manner in which he cased flats. He had been casing flats the same way for four years and no one explained what he should do differently. Appellant stated that he feared being disciplined for performing tasks incorrectly but was not given adequate instructions as to the proper way of performing the tasks.

⁵ Appellant indicated that the leave was approved two days before the wedding but his request was denied initially.

⁶ Ms. Vincent demonstrated for appellant how to case "flats" (large flat mail pieces that exceed the dimensions for letter-size mail). Appellant indicated that he had to use a different method when the mail slots were too full. Ms. Vincent did not explain what he was to do when slots were overcrowded. He asked a coworker for advice but Mr. Crawford told him to get back to work.

⁷ See *supra* note 3.

⁸ Appellant stated that in 1998 the Office accepted work-related major depression and anxiety syndrome. He returned to work in 2001. The Office closed his 1998 emotional condition case in 2004 and terminated authorization for medical treatment. However, the Office later determined that his condition had not resolved and so advised him on January 18, 2005.

⁹ Appellant indicated that management accepted the production standards that he proposed for himself but did not put this information into their computer, resulting in a record of low production.

¹⁰ Appellant indicated that he did not personally see the former supervisor at the employing establishment.

In a September 23, 2005 statement, Ms. Vincent stated that appellant had received adequate training for his job and was counseled regarding any errors he made. If employees consistently made errors, supervisors took appropriate corrective action. Ms. Vincent denied that she told appellant or other carriers that they were “pathetic carriers” or the worst that she had seen. She explained that her production expectations were that carriers meet or exceed the employing establishment standard and had used the term “pathetic” to describe her opinion of the employing establishment standards. Ms. Vincent never harassed appellant by threatening discipline or in any other way. She properly exercised her supervisory duties in monitoring carriers in the office and on their delivery routes. Regarding the incident at the school, Ms. Vincent indicated that it was her job to question carriers if it seemed that they were taking excessive time to deliver their routes. When she saw appellant’s vehicle in front of a school, she stopped. He exited, carrying a soda, 12 minutes after she arrived. She did not know how long he had been in the school before she arrived. Ms. Vincent stated that it was her job to ensure that carriers did not take extended breaks without permission. She indicated that it was not possible that a patron overheard her conversation with appellant and denied that she asked him questions about his bathroom habits. Regarding the casing of flats, Ms. Vincent instructed appellant as to the proper and efficient manner in which to case flats and left after she felt he had received adequate instruction.

In an October 5, 2005 letter to management, union steward Michael Pappas indicated that Ms. Vincent had created a hostile work environment through intimidation and harassment and had disciplined many employees.

In a November 1, 2005 statement, Steven Oblad, a supervisor, stated that on June 21, 2005 he approved appellant’s leave request for July 1, 2005. Prior to granting the leave, he told appellant that he could not guarantee approval because many employees were going to be on leave due to the Fourth of July holiday weekend. Mr. Oblad denied that he ever treated appellant unfairly.

In a statement received by the Office on November 23, 2005, Mr. Crawford stated that he advised appellant that he could be disciplined if he made additional mistakes in the PARS system. He stated that on one occasion he instructed appellant to get back to work which was a proper supervisory function. Mr. Crawford stated that at a meeting he allowed appellant to ask a question and it was appellant’s misperception that he did it “grudgingly.”

Appellant submitted an October 10, 2005 medical report which contained a diagnosis of major depressive disorder with anxiety features.

By decision dated April 17, 2006, the Office denied appellant’s claim on the grounds that the evidence did not establish that his emotional condition was causally related to a compensable work factor.¹¹

¹¹ Appellant submitted additional evidence subsequent to the Office decision of April 17, 2006. The Board’s jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

To establish a claim that he sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.¹³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁴

Administrative and personnel matters, although generally related to the employees' employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹⁵ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment, in what would otherwise be an administrative matter, coverage will be afforded.¹⁶ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.¹⁸ If a claimant does implicate a

¹² *Pamela D. Casey*, 57 ECAB ____ (Docket No. 05-1768, issued December 13, 2005; *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

¹³ 5 U.S.C. §§ 8101-8193; see *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

factor of employment, the Office should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.¹⁹ Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.²⁰

ANALYSIS

Appellant alleged that management gave him conflicting or vague work instructions or no instructions, closely monitored his work and criticized his job performance. Management initially denied his request for leave to attend his son's wedding and granted the request only two days before the event. He alleged that Mr. Crawford told him to get back to work when he asked a coworker about an instruction he had received. Appellant alleged that Ms. Vincent approached him on his route when he parked in front of a school to use the restroom. In front of a postal patron, she told him that he had taken more than 12 minutes to use the restroom and asked him how many times a day he used a restroom. On another occasion Ms. Vincent asked appellant why he was late returning from his route. These allegations involve administrative matters which generally do not fall within coverage of the Act.²¹ An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.²² Discussions regarding job performance, instructions on performing tasks, the granting or denying of leave requests and monitoring of work by supervisors are administrative functions that are not compensable absent error or abuse.²³ Ms. Vincent indicated that appellant had received adequate training regarding his job tasks and appropriate counseling concerning any errors he made. She stated that she had properly exercised her supervisory duties in monitoring appellant in the office and on his delivery route. Regarding the incident at the school, Ms. Vincent indicated that it was her job to question carriers if they seemed to be taking an excessive amount of time to deliver their routes. When she saw appellant's vehicle in front of a school, she spoke to him as part of her duty to ensure that carriers did not take extended breaks without permission. Ms. Vincent indicated that it was not possible that a patron overheard her conversation with appellant and denied that she asked him questions about his bathroom habits. Regarding the casing of flats, she instructed him as to the proper and efficient manner in which to case flats and left after she felt he had received adequate instruction. Prior to granting appellant's request for leave to attend his son's wedding on July 1, 2005, Mr. Oblad advised him that he could not guarantee approval because many employees were going to be on leave due to the Fourth of July holiday weekend. However, on June 21, 2005 the leave was granted, not two days before the wedding as appellant alleged. Mr. Crawford indicated that he properly exercised his supervisory functions in advising appellant

¹⁹ See *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

²⁰ *Jeral R. Gray*, 57 ECAB ____ (Docket No. 05-1851, issued June 8, 2006).

²¹ *Michael L. Malone*, 46 ECAB 957 (1995).

²² *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

²³ *Michael A. Salvato*, 53 ECAB 666 (2002).

that he could be disciplined if he made additional mistakes in his tasks and in instructing him to get back to work on one occasion when he was talking to a coworker. Appellant has provided insufficient evidence that the employing establishment erred or acted abusively in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that his supervisors harassed and discriminated against him. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.²⁴ However, for harassment and discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.²⁵ The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.²⁶ Appellant alleged that management harassed him by threatening disciplinary action for making too many errors in his work. He alleged that on one occasion Ms. Vincent told him and two other employees that they were not allowed to ask questions during a discussion and called them "pathetic" carriers. Appellant alleged that Ms. Vincent made inappropriate comments concerning his use of the restroom. In response to appellant's allegations, Ms. Vincent indicated that, if employees consistently made errors or did not meet production standards, supervisors took appropriate corrective action. She denied that she told appellant or other carriers that they were "pathetic carriers. Ms. Vincent explained that she had used the term "pathetic" in describing what she felt were low employing establishment production standards. She denied threatening discipline as a form of harassment or otherwise harassing appellant. Mr. Pappas, a union steward, indicated that Ms. Vincent had created a hostile work environment through intimidation and harassment. However, he provided no specific examples of incidents involving appellant. Therefore, his statement is insufficient to establish that management harassed appellant. Appellant alleged that at a meeting, Mr. Crawford "grudgingly" allowed him to ask questions. However, Mr. Crawford stated that it was appellant's misperception that he "grudgingly" allowed him to ask questions. The Board finds the case insufficient of harassment or discrimination by management. Therefore, this allegation is not deemed a compensable employment factor.

Appellant alleged that the Office prematurely closed an earlier compensation claim but later determined that his condition had not resolved and granted continued authorization for medical treatment. The processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.²⁷ Therefore, this allegation is not deemed a compensable factor of employment.

²⁴ *Id.*

²⁵ *Donna J. DiBernardo*, 47 ECAB 700 (1996).

²⁶ *Janice I. Moore*, 53 ECAB 777 (2002).

²⁷ *George A. Ross*, 43 ECAB 346 (1991).

Appellant alleged that management did not make accommodations in his production standards for his previously accepted emotional condition. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.²⁸ However, there is insufficient evidence to establish as factual appellant's allegation that the employing establishment required him to perform work that exceeded his medical restrictions. Therefore, this allegation is not a compensable employment factor.

Appellant alleged that another carrier informed him that he had seen a former supervisor visiting the employing establishment. This information upset him because the supervisor had contributed to his 1998 emotional condition. However, appellant acknowledged that he did not personally see the former supervisor or have any contact with him. There is insufficient explanation as to how the mere fact that a coworker had seen the former supervisor, but not appellant himself, contributed to his emotional condition. Therefore, this allegation is not a compensable employment factor.

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment.²⁹

²⁸ *Diane C. Bernard*, 45 ECAB 223 (1993).

²⁹ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2006 is affirmed.

Issued: October 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board